

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EURONET PAYMENTS & REMITTANCE, INC.,

Petitioner,

v.

ENVIOS DE VALORES LA NACIONAL CORP.,
ENVIOS DE VALORES LA NACIONAL, INC.,
AEROCARIBE TRAVEL AGENCY, INC.,
JOSE ANDRES HERNANDEZ ANDUJAR,
CANDIDA DE HERNANDEZ, AND
ROBERTO LOPEZ,

Respondents.

ECF CASE

Civil Action No. 07 CV 5467
(JSR)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1331 and 9 U.S.C. §§ 203, 205 and 302, 305, Respondents Envios de Valores La Nacional Corp., Envios de Valores La Nacional, Inc., AeroCaribe Travel Agency, Inc., Jose Andres Hernandez Andujar, Candida De Hernandez and Roberto Lopez hereby file this Notice of Removal to this Court to remove the above-captioned proceeding to this Court and state as follows:

PROCEEDING BEING REMOVED

1. Envios de Valores La Nacional Corp., Envios de Valores La Nacional, Inc., AeroCaribe Travel Agency, Inc., Jose Andres Hernandez Andujar, Candida De Hernandez and Roberto Lopez are named as Respondents in a special proceeding filed in and presently pending before the Supreme Court of the State of New York, County of New York, captioned *Euronet Payments & Remittance, Inc. v. Envios de Valores La Nacional Corp., Envios de Valores La*

Nacional, Inc., AeroCaribe Travel Agency, Inc., Jose Andres Hernandez Andujar, Candida De Hernandez, and Robert Lopez, Index No. 601675/07 (the “State Court Proceeding”).

2. The petition filed in the State Court Proceeding was filed by petitioner Euronet Payments & Remittance, Inc. (“Petitioner”) with the Supreme Court of the State of New York, County of New York, on or about May 18, 2007.

3. On May 21, 2007, Respondents Envios de Valores La Nacional Corp., Envios de Valores La Nacional, Inc., and AeroCaribe Travel Agency, Inc., received by mail copies of Petitioner's filings in the State Court Proceeding, including Petitioner's Notice of Petition to Stay Arbitration, Verified Petition to Stay Arbitration, both dated May 17, 2007, and exhibits thereto. Counsel for Respondents also received by mail on May 21, 2007, a copy Petitioner's filings in the State Court Proceeding, including Petitioner's Notice of Petition to Stay Arbitration, the Verified Petition to Stay Arbitration and exhibits thereto. A copy of all process, pleadings and other state court papers filed by Petitioner in the State Court Proceeding which were received by Respondents Envios de Valores La Nacional Corp., Envios de Valores La Nacional, Inc., and AeroCaribe Travel Agency, Inc., and by Counsel for Respondents are attached hereto as Exhibit A.

4. No further proceedings have been had in the Supreme Court of the State of New York, County of New York, in the State Court Proceeding as of the date of filing of this Notice of Removal.

FEDERAL QUESTION JURISDICTION

5. This Court has original federal question jurisdiction over the State Court Proceeding pursuant to 28 U.S.C. §§ 1331 and 1441 and 9 U.S.C. §§ 202, 203, 205 and §§ 302 and 305 on the grounds that the Stock Purchase Agreement (“SPA”) among Petitioner Euronet

Payments & Remittance, Inc., and Respondents Jose Andres Hernandez Andujar, Candida De Hernandez, Envios de Valores La Nacional Corp., Envios de Valores La Nacional, Inc. and AeroCaribe Travel Agency, Inc. contains an arbitration clause subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“Convention”) and all actions or proceedings subject to the Convention are “deemed to arise under the laws and treaties of the United States.” 9 U.S.C. § 203.

6. The SPA among the parties, with respect to which the alleged claims asserted in the State Court Proceeding arise, is a “contract evidencing a transaction involving commerce” under 9 U.S.C. § 2 in that it involves “commerce among the several States or with any foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation” 9 U.S.C. § 1.

7. The SPA contains a broad arbitration clause which states in part:

In the event of any dispute concerning this Agreement, its effect or the transactions contemplated hereby, either party may, by notice to the other parties, require such dispute or difference to be submitted to arbitration, which shall be conducted in accordance with the Commercial Arbitration Rules and Mediation Procedures of American Arbitration Association (the “AAA”) as amended by this Section 11.4. The arbitrator will be selected by the agreement of the parties or, if they cannot agree on an arbitrator within 30 days after the notice of such party’s desire to have the question settled by arbitration, then the arbitrator will be selected by the AAA office in New York, New York. Any such arbitration will occur in New York City.

Exhibit A, at Exhibit 1 p. 48-49, ¶ 11.4 (Amended Petition for Rescission, Declaratory Judgment, and Damages Pursuant to K.S.A. Chapter 60) of Exhibit A (Petition to Stay Arbitration).

8. The issues raised in Petitioner's petition filed in the State Court Proceeding arise from a "dispute concerning this Agreement [the SPA], its effect or the transactions contemplated thereby," and thus are subject to the SPA's arbitration clause.

9. On April 30, 2007, counsel for the parties named as Respondents in the State Court Proceeding sent notice to Petitioner of their intent to require arbitration of the dispute alleged in Petitioner's Amended Petition for Rescission, Declaratory Judgment, and Damages Pursuant to K.S.A. Chapter 60, Case No. 07 CV 02001, which was filed in the District Court of Johnson County, Kansas on April 5, 2007. This action was removed to the United States District Court for the District of Kansas on May 17, 2007.

10. Pursuant to 9 U.S.C. § 202,

An arbitration agreement . . . arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract or agreement described in section 2 of this title, falls under the Convention [on the Recognition and Enforcement of Foreign Arbitral Awards]. An agreement or award arising out of such relationship which is entirely between citizens of the United States shall not be deemed to fall under the Convention

Respondents José Hernández Andujar and Candida de Hernández, who are signatories to the SPA, (see Exhibit A, at Exhibit 1 p. 1 (Amended Petition for Rescission, Declaratory Judgment, and Damages Pursuant to K.S.A. Chapter 60) of Exhibit A (Petition to Stay Arbitration)) are citizens and residents of the Dominican Republic. Thus, the SPA is an agreement that is not "entirely between citizens of the United States," and is subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

11. Section 203 of Title 9 of the United States Code states:

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States . . . shall have original

jurisdiction over such an action or proceeding, regardless of the amount in controversy.

This Court thus has original federal question jurisdiction of the claims asserted in the State Court Proceeding because it is a proceeding subject to the Convention pursuant to 9 U.S.C. § 203.

12. Section 205 of Title 9 of the United States Code states:

Where the subject matter of an action or proceeding pending in a State court related to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceedings is pending.

Pursuant to 9 U.S.C. § 205, Respondents may remove the State Court Proceeding to this Court.

13. In addition, Section 302 of Title 9 of the United States Code provides federal question jurisdiction in that a majority of the parties to the SPA are citizens of a State or States that have ratified or acceded to the Inter-American Convention and are member States of the Organization of American States. 9 U.S.C. § 305.

14. Section 302 of Title 9 of the United States Code incorporates by reference *inter alia* Sections 202, 203 and 205 of Title 9 of the United States Code.

ADDITIONAL STATEMENTS WITH RESPECT TO REMOVAL

15. This Notice is being filed with this Court within thirty days after Respondents Envios de Valores La Nacional Corp., Envios de Valores Nacional, Inc. and AeroCaribe Travel Agency, Inc. was served with a copy of the initial pleading setting forth the claims for relief upon which Petitioner's special proceeding is based, and no Respondent received a copy of said initial pleading more than thirty days prior to this Notice being filed.

16. Respondents Envios de Valores La Nacional Corp., Envios de Valores La Nacional, Inc., AeroCaribe Travel Agency, Inc., Jose Andres Hernandez Andujar, Candida De Hernandez and Roberto Lopez will give notice of removal to Petitioner through their attorney of

record and will file a true and correct copy of this Notice of Removal with the Supreme Court of the State of New York, County of New York, pursuant to 28 U.S.C. § 1446(d). A copy of the notice that will be filed with the Clerk in the State Court Proceeding is attached as Exhibit B.

17. In filing this Notice of Removal, the Respondents do not waive any defense that may be available to them.

WHEREFORE, Envios de Valores La Nacional Corp., Envios de Valores La Nacional, Inc., AeroCaribe Travel Agency, Inc., Jose Andres Hernandez Andujar, Candida De Hernandez and Roberto Lopez named as Respondents in the State Court Proceeding respectfully request that the State Court Proceeding filed by Petitioner in the Supreme Court of New York, County of New York, be removed to this Court.

Dated: New York, New York
June 8, 2007

Respectfully submitted,

/s Howard F. Sidman

Michael J. Templeton (MT-8709)

Howard F. Sidman (HS-9615)

Jones Day

222 East 41st Street

New York, New York 10021

Telephone: 212-326-3939

Attorneys for Respondent

Envios de Valores La Nacional Corp., Envios de
Valores La Nacional, Inc., AeroCaribe Travel
Agency, Inc., Jose Andres Hernandez Andujar,
Candida De Hernandez and Roberto Lopez

Of Counsel:

G. Lee Garrett, Jr.

L. Christine Lawson

Jones Day

1420 Peachtree Street, N.E., Suite 800

Atlanta, GA 30309

Telephone: 404-521-3939